

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE SERVICES

Before the Commissioner of Financial and Insurance Services

In the matter of

XXXXX

Petitioner

v

Aetna Life Insurance Company
Respondent

File No. 85310-001

Issued and entered
this 6th day of November 2007
by Ken Ross
Acting Commissioner

ORDER

I
PROCEDURAL BACKGROUND

On September 21, 2007, XXXXX filed a request for external review with the Commissioner of Financial and Insurance Services on behalf of her minor son, XXXXX (Petitioner), under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.* The Commissioner reviewed the request and accepted it on September 28, 2007.

The Commissioner notified Aetna Life Insurance Company (Aetna) of the external review and requested the information used in making its adverse determination. Aetna provided the information on October 10, 2007.

The Commissioner determined that the issue here could be decided by applying the terms and conditions of the Petitioner's health care insurance policy. The Commissioner reviews contractual issues pursuant to MCL 550.1911(7). This matter does not require a medical opinion from an independent review organization.

II FACTUAL BACKGROUND

The Petitioner, born XXXXX, 1999, has health care coverage under a small group plan with Aetna. His coverage is defined in the certificate of coverage (the certificate).

On March 28, 2007, he was seen in the emergency room of the XXXXX. Charges for the service were submitted to Aetna. Aetna reviewed the claim and applied the entire \$642.00 charge to the Petitioner's annual deductible for outpatient surgery.

The Petitioner appealed. Aetna reviewed the claim but upheld its decision and issued an adverse determination dated September 6, 2007.

III ISSUE

Is Aetna correct in applying the March 28, 2007 emergency room charges to the Petitioner's annual in-network deductible?

IV ANALYSIS

Petitioner's Argument

The Petitioner was injured on March 28, 2007, when he was hit in the mouth by a plastic bat while playing with a friend. He was taken to the XXXXX emergency room for repair of two lacerations on his mouth. Treatment involved suturing the upper and lower lips.

The Petitioner's mother disputes Aetna's decision to process the claims as outpatient surgery, for which there is a \$1,000.00 annual in-network deductible. She believes the care should be considered emergency room treatment as described in the certificate, for which there is a \$100.00 per visit copayment and no deductible.

The Petitioner's mother argues that Aetna should change its decision and cover the March 2007 services as emergency care.

Aetna's Argument

In its final adverse determination, Aetna gave this explanation for its decision on the Petitioner's claim:

Based on our review..., we are upholding the previous benefit decision to pay the emergency room physician charges as billed, however your plan requires a \$1,000.00 in network deductible to be met so the Emergency physician charges went towards the deductible.

How we made our decision

- After reprocessing your emergency physician charges as in network according to the determination at your level 1 appeal, the total amount of \$642.00 went towards your in network deductible.

Commissioner's Review

The Petitioner's accident on March 28, 2007, required suturing of lacerations to his upper and lower lips. The suturing was performed in the XXXXX emergency room. It is clear from the emergency room "Evaluation/Assessment Documents" that the hospital's course of action was determined by and performed in the emergency room on that visit.

Emergency room treatment is indisputably a covered benefit under the certificate. The certificate includes it under "Comprehensive Medical Expense Coverage" on page 17:

Emergency Room Treatment

Emergency Care

If treatment:

- is received in the emergency room of a hospital while a person is not a full-time patient; and
- the treatment is emergency care.

"Emergency care" is defined in the certificate (page 46):

Emergency Care

This means the treatment given in a hospital's emergency room to evaluate and treat medical conditions of a recent onset and severity, including, but not limited to severe pain, which would lead a prudent layperson possessing an average knowledge of medicine and health to believe that his or her condition, sickness, or injury is of such a nature that failure to get immediate medical care could result in:

- Placing the person's health in serious jeopardy; or
- Serious impairment to bodily function; or
- Serious dysfunction of a body part or organ; or
- In the case of a pregnant woman, serious jeopardy to the health of the fetus.

Aetna has not disputed, in either its final adverse determination or in any material that was submitted as part of this external review, that the treatment the Petitioner received was for emergency care. When the Commissioner looks at the record, it appears that the care was received in the emergency room and provided by emergency room physicians (i.e., Emergency Care Specialists). Aetna referred to its "decision to pay the emergency room physician charges" in its final adverse determination. Furthermore, Aetna has not explained why the Petitioner's care should be seen as something other than emergency room treatment, or its basis for deciding that the care was outpatient surgery. Therefore, the Commissioner finds the Petitioner did receive emergency room treatment as that term is used in the certificate.

In finding that the Petitioner received covered emergency room treatment, the Commissioner finds that it is subject only to the \$100.00 per visit copayment and no deductible, as explained in the certificate (page 6 of the "Summary of Coverage" for MI Open Choice PPO):

	Preferred Care	Non-Preferred Care
<i>Emergency Room Treatment</i>		
<i>Emergency Care</i>		
Calendar Year Deductible Applies	No	No
Per Visit Copay	\$ 100	\$ 100
Payment Percentage	100%	100%

The Commissioner finds that the Petitioner's services on March 28, 2007, were emergency room treatment, a covered benefit subject only to the \$100.00 per visit copayment and no deductible.

**V
ORDER**

The Commissioner reverses Aetna's final adverse determination. Aetna shall authorize and cover the Petitioner's emergency room treatment on March 28, 2007, subject only to the \$100.00 copayment and without the application of an in-network deductible.

Aetna shall comply with this Order within sixty days from the date of this Order and shall provide the Commissioner with proof of compliance within seven days of that compliance.

To enforce this Order, the Petitioner must report any complaint regarding compliance to the Office of Financial and Insurance Services, Health Plans Division, at (877) 999-6442 (toll free).

This is a final decision of an administrative agency. Under MCL § 550.1915, any person aggrieved by this Order may seek judicial review no later than sixty days from the date of this Order in the Circuit Court for the county where the covered person resides or in the Circuit Court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of the Office of Financial and Insurance Services, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.